

EXHIBIT 1

SENORX, INC. vs. COUDERT BROTHERS, LLP, et al.

Case No. C -01075 SC

REMAND MOTION

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT
2006 NOV -8 PM 3:34
GORDON PARK-LI. CLERK
BY: _____
DEPUTY CLERK

LAW OFFICES OF MICHAEL J. PIUZE
Michael J. Piuze, SBN 51342
Geraldine Weiss, SBN 168455
11755 Wilshire Boulevard, Suite 1170
Los Angeles, California 90025
Telephone: (310) 312-1102
Facsimile: (310) 473-0708
Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

SENORX, INC.,

Plaintiff,

vs.

COUDERT BROTHERS, LLP; WILLIAM K.
ENGER; ROBERT R. JESUELE;
GREGORY KEEVER; GEORGE J.
KOELZER; RALPH C. NAVARRO;
RUSSELL W. ROTEN; JOHN A. St.
CLAIR; GLENN W. TROST; WILLIAM M.
WALKER; ROBERT J. ZAPF; J.D.
HARRIMAN II; DAVID HUEBNER; EARL J.
IMHOFF, JR.; EDWARD J. LABOWITZ;
DONALD L. BARTELS; GARY L. BENTON;
LILLIAN K. NAKAGAWA; DAVID
SCHNAPF; JAMES E. TOPINKA; MARK H.
WILDASIN; WILLIAM N. HEBERT;
ROBERT A. CHRISTOPHER; RICHARD A.
JONES; EDWARD B. LOZOWICKI; GREG
L. PICKRELL; CHARLES E. ASTER;
STEVEN H. BECKER; PHILIPPE
BENNETT; THOMAS D. BRISLIN;
PAMELA T. CHURCH; EDMUND S.
COHEN; JEFFREY E. COHEN; JAMES C.
COLIHAN; CHARLES H. CRITCHLOW;
RICHARD A. DE PALMA; THOMAS J.
DRAGO; ROBERT L. EISEN; ANGELA
MARIANA FREYRE; KEVIN W. GOERING;
DEBORAH J. GOLDSTEIN; MICHAEL J.
HAGAN; ROBERT E. HANLON; GERALD
V. HANNON; JEFFREY C. HAYES;

CASE NO. CGC 04-435849

**FOURTH AMENDED COMPLAINT
FOR DAMAGES FOR
PROFESSIONAL (LEGAL)
NEGLIGENCE**

Hon. Katherine Feinstein
DEPT.: 501

Action Filed: October 27, 2004
Trial Date: Vacated

1 ANDREW S. HEDDEN; STEPHEN M.)
 HUDSPETH; ANTHONY C. KAHN; W.)
 2 MICHAEL KELLY; FREDERICK P.)
 KONTA; GEORGE J. MARTIN, JR.;)
 3 BRIAN E. MCGUNIGLE; CARLOS E.)
 MENDEZ-PENATE; BARRY METZGER;)
 4 LANCE J. MILLER; MARILYN SELBY)
 OKOSHI; RICHARD M. ORNITZ,)
 5 KENNETH R. PAGE; DARRELL)
 PRESCOTT; CLYDE E. RANKIN, II;)
 6 RICHARD R. REILLY; THOMAS J. RICE;)
 JOHN F. SHEEDY; JAMES B. SITRICK;)
 7 EDWARD H. TILLINGHAST, III; MARY F.)
 VOCE; CHARLES H. WAGNER;)
 8 CHRISTOPHER M. WELLS; ANTHONY)
 WILLIAMS; MICHAEL R. CALABRESE;)
 9 WILLIAM K. COULTER; RICHARD N.)
 DEAN; CHARLES FRIEDLANDER; KAY)
 10 GEORGI; TARA KALAGHER GIUNTA;)
 JANET HERNANDEZ; GEORGE M.)
 11 KNAPP; EDWARD H. LIEBERMAN;)
 TEDSON J. MEYERS; ROBERT F.)
 12 PIETROWSKI, JR.; ROGER D. STARK;)
 ROGER B. WAGNER; JONATHAN CAHN;)
 13 ROBERT CLARE; JOSEPH FARRELL;)
 THEODORE FARRIS; JOHN GURLEY;)
 14 MARIAN HADLER; AMY JOHANNESSEN;)
 CHARELS KEEFE; JON MICHAELSON;)
 15 OWEN NEE; OLGA SIRODOEVA;)
 CAROLE STUBBLEFIELD; and DOES 112)
 16 through 500, Inclusive,)
 17 Defendants.)
 18

19 COMES NOW, plaintiff SENORX and for a cause of action against the defendants,
 20 and each of them, alleges:

21 1. That the true names, identities, or capacities, whether individual, corporate,
 22 associate, or otherwise of defendants DOES 112 through 500, inclusive, are unknown to
 23 plaintiff at this time, and plaintiff therefore sues said defendants by such fictitious names.
 24 When the true names, identities, capacities, or participation of such fictitiously designated
 25 defendants are ascertained, plaintiff will ask leave of court to amend it's Complaint to insert
 26 said names, identities, capacities, together with the proper charging allegations.

27 ///

2. Plaintiff is informed and believes and thereon alleges that each of the defendants sued herein as DOE is responsible in some manner for the events and happenings herein referred to, thereby proximately causing the damages to the plaintiff hereinafter set forth.

3. At all times mentioned herein, each of the defendants sued herein was the agent, servant, and employee of each other and of his/her co-defendants, and as such, was acting within the time, place, purpose, and scope of said agency, service and employment; that each and every defendant, as aforesaid, when acting as a principal, was negligent in the selection and hiring of each and every other defendant as an agent, servant, and employee, and were in some way negligently or otherwise, responsible for the events herein alleged.

4. Plaintiff is informed and believes, and thereon alleges, that defendant COUDERT BROTHERS, LLP, is, and at all times relevant was, a law firm in the form of a Limited Liability Partnership, with principle offices in New York State, authorized to conduct business as a law firm in the State of California.

5. Plaintiff is informed and believes, and thereon alleges, that defendants WILLIAM K. ENGER, ROBERT R. JESUELE, GREGORY KEEVER, GEORGE J. KOELZER, RALPH C. NAVARRO, RUSSELL W. ROTEN, JOHN A. St. CLAIR, GLENN W. TROST, WILLIAM M. WALKER, ROBERT J. ZAPF, J.D. HARRIMAN II, DAVID HUEBNER, EARL J. IMHOFF, JR., EDWARD J. LABOWITZ and each of them, are, and at all times relevant were, residents of, and/or doing business as lawyers, each of whose legal structures are presently unknown but may have been COUDERT BROTHER, LLP limited liability partners, in the County of Los Angeles, State of California.

6. Plaintiff is informed and believes, and thereon alleges, that defendants DONALD L. BARTELS, GARY L. BENTON, LILLIAN K. NAKAGAWA, DAVID SCHNAPF, JAMES E. TOPINKA, MARK H. WILDASIN, WILLIAM N. HEBERT, JOHN MICHAELSON and GREG L. PICKRELL and each of them, are, and at all times relevant were, residents of, and/or doing business as lawyers, each of whose legal structures are presently

1 unknown but may have been Coudert Brothers, LLC limited liability partners, in the County
2 of San Francisco, State of California.

3 7. Plaintiff is informed and believes, and thereon alleges, that defendants
4 ROBERT A. CHRISTOPHER, RICHARD A. JONES and EDWARD B. LOZOWICKI and
5 each of them, are, and at all times relevant were, residents of, and/or doing business as
6 lawyers, each of whose legal structures are presently unknown but may have been
7 COUDERT BROTHERS, LLP limited liability partners, in the County of San Jose, State of
8 California.

9 8. Plaintiff is informed and believes, and thereon alleges, that defendants
10 CHARLES E. ASTER, STEVEN H. BECKER, PHILIPPE BENNETT, THOMAS D. BRISLIN,
11 PAMELA T. CHURCH, EDMUND S. COHEN, JEFFREY E. COHEN, JAMES C. COLIHAN,
12 CHARLES H. CRITCHLOW, RICHARD A. DE PALMA, THOMAS J. DRAGO, ROBERT L.
13 EISEN, ANGELA MARIANA FREYRE, KEVIN W. GOERING, DEBORAH J. GOLDSTEIN,
14 MICHAEL J. HAGAN, ROBERT E. HANLON, GERALD V. HANNON, JEFFREY C. HAYES,
15 ANDREW S. HEDDEN, STEPHEN M. HUDSPETH, ANTHONY C. KAHN, W. MICHAEL
16 KELLY, FREDERICK P. KONTA, GEORGE J. MARTIN, JR., BRIAN E. MCGUNIGLE,
17 CARLOS E. MENDEZ-PENATE, BARRY METZGER, LANCE J. MILLER, MARILYN
18 SELBY OKOSHI, RICHARD M. ORNITZ, KENNETH R. PAGE, DARRELL PRESCOTT,
19 CLYDE E. RANKIN, II, RICHARD R. REILLY, THOMAS J. RICE, JOHN F. SHEEDY,
20 JAMES B. SITRICK, EDWARD H. TILLINGHAST, III; MARY F. VOCE, CHARLES H.
21 WAGNER, CHRISTOPHER M. WELLS, ROBERT CLARE, THEODORE FARRIS, AMY
22 JOHANNESSEN, CHARLES KEEFE, OWEN NEE, CAROLE STUBBLEFIELD and
23 ANTHONY WILLIAMS and each of them, are, and at all times relevant were, residents of,
24 and/or doing business as lawyers, each of whose legal structures are presently unknown
25 but may have been COUDERT BROTHERS, LLP limited liability partners, in the City of
26 New York, State of New York.

27 9. Plaintiff is informed and believes, and thereon alleges, that defendants
28 MICHAEL R. CALABRESE, WILLIAM K. COULTER, RICHARD N. DEAN, CHARLES

1 FRIEDLANDER, KAY GEORGI, TARA KALAGHER GIUNTA, JANET HERNANDEZ,
2 GEORGE M. KNAPP, EDWARD H. LIEBERMAN, TEDSON J. MEYERS, ROBERT F.
3 PIETROWSKI, JR., ROGER D. STARK, JOHN GURLEY, MARIAN HAGLER, JONATHON
4 CAHN and ROGER B. WAGNER and each of them, are, and at all times relevant were,
5 residents of, and/or doing business as lawyers, each of whose legal structures are
6 presently unknown but may have been COUDERT BROTHERS, LLP limited liability
7 partners, in the City of Washington, D.C.

8 10. Plaintiff is informed and believes, and thereon alleges, that defendant
9 JOSEPH FARRELL is, and at all times relevant was, a resident of, and/or doing business
10 as a lawyer, whose legal structure is presently unknown but may have been a COUDERT
11 BROTHERS, LLP limited liability partner, in the State of Connecticut.

12 11. Plaintiff is informed and believes, and thereon alleges, that defendant
13 OLGA SIRODOEVA is, and at all times relevant was, a resident of, and/or doing business
14 as a lawyer, whose legal structure is presently unknown but may have been a COUDERT
15 BROTHERS, LLP limited liability partner, in the State of Maryland.

16 12. On August 15, 2001, in San Francisco, California, plaintiff retained and
17 employed the law firm defendant COUDERT BROTHERS, LLP, which included as partners
18 all of the other defendants, to represent it in regard to certain patent matters, including the
19 filing of Canadian, European and Japanese patent applications. At such time and place,
20 the law firm defendant COUDERT BROTHERS, LLP, accepted such employment and
21 agreed to represent plaintiff, and to do whatever was necessary to properly and timely file
22 the patents.

23 13. The California Corporations Code Section 16956 (a) (2) governed and
24 governs limited liability partnerships that practice law in the State of California. The
25 purpose of this statute is to ensure adequate security for the creditors and potential
26 creditors of an LLP. This included and includes plaintiff SENORX. The statute allows an
27 LLP to comply with one or a combination of three different methods of ensuring adequate
28 security.

14. *California Corporations Code Section 16956 (a)(2)* required and requires that defendant COUDERT BROTHERS, LLP comply with one or a combination of the following three requirements: 1. maintain in accordance with subsection (A) liability insurance in the amount of at least \$7,500,000; 2. maintain in accordance with subsection (B) in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security or payment of liabilities in the amount of at least \$7,500,000; and 3. have a net worth equal to or exceeding fifteen million dollars (\$15,000,000) and to file a confirmation of that fact.

15. At all times relevant, defendant COUDERT BROTHERS, LLP:

1. maintained liability insurance policies that contain a deductible or self insured retention of a minimum of \$3,000,000; 2. failed to maintain in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security or payment of liabilities in the amount of at least \$7,500,000; and 3. failed to have a net worth equal to or exceeding \$15,000,000 and failed to file a confirmation of that fact.

16. As a result of defendant COUDERT BROTHERS, LLP's choice of maintaining liability insurance policies that contained a deductible or self insured retention of a minimum of \$3,000,000 and its failure to maintain cash or the cash equivalents enumerated in Paragraph 15 and its failure to have a net worth of at least \$15,000,000 and its failure to file a confirmation of that fact, COUDERT BROTHERS, LLP has failed to ensure adequate security for its creditors and potential creditors, including plaintiff SENORX.

17. *California Corporations Code Section 16956 (a)(2)* also required and requires in subsection (C) that by virtue of every COUDERT BROTHERS, LLP attorney's status as a partner, each partner automatically guarantees payment of the difference between the maximum amount of security required for the partnership and the security otherwise provided under subsections (A) and (B). Therefore any gap in coverage resulting from the deductible or self insured retention of at least \$3,000,000, and not

1 covered by one or more of the other permissible mechanisms up to the maximum amount
2 of security required (\$15,000,000) is personally guaranteed by each partner of defendant
3 COUDERT BROTHERS, LLP. These partners would then be proper party defendants in
4 a professional negligence case.

5 18. All of the individual defendants were partners at the law firm defendant
6 COUDERT BROTHERS, LLP. By virtue of their status as partners, they have automatically
7 guaranteed payment of the difference between at least \$7,500,000 in subsection (A)
8 liability insurance; in subsection (B) trust or bank escrow, cash, bank certificates of
9 deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance
10 or surety companies as security or payment of liabilities; and the actual amount of the
11 funds provided by subsections (A) and (B). They have guaranteed payment of any gap in
12 coverage caused by the deductible or self insured retention of at least \$3,000,000 up to
13 \$15,000,000. They are therefore proper party defendants in this case.

14 19. Defendant COUDERT BROTHERS, LLP failed to comply and did not
15 maintain \$7,500,000 in accordance with section 16956(a)(2) (B) in trust or bank escrow,
16 cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit,
17 or bonds of insurance or surety companies as security or payment of liabilities; and the
18 actual amount of the funds provided by subsections (A) and (B). Defendant COUDERT
19 BROTHERS, LLP failed to comply with section (a)(2) subsection (D) by not filing a
20 confirmation and/or did not and does not have a net worth equal to or exceeding fifteen
21 million dollars (\$15,000,000) as provided by subsection (D).

22 20. The law firm defendant COUDERT BROTHERS, LLP, failed to exercise
23 reasonable care, skill and diligence in its representation of plaintiff, which was negligent
24 and was below the standard of care in the legal community.

25 21. Plaintiff was not informed that its patent applications had not been properly
26 or timely filed until October 27, 2003, at which time the law firm defendant COUDERT
27 BROTHERS, LLP provided this information to plaintiff.

28 ///

1 22. As a direct, proximate and legal result of the negligence of the law firm
2 defendant COUDERT BROTHERS, LLP, plaintiff was and is unable to avail itself of, and
3 benefit from, the patents which were not properly or timely filed, which has caused plaintiff
4 economic harm in excess of the minimum jurisdiction of this court.

5 23. After this lawsuit was filed defendant COUDERT BROTHERS, LLP was
6 found liable for punitive damages in a case entitled Lyman Gardens Apartments,
7 LLC, at al v. Coudert Brothers, LLP, et al., Los Angeles County Superior Court Case
8 No. BC 299990. During that trial, testimony was given by Pat Kane, executive
9 director of defendant COUDERT BROTHERS, LLP regarding its financial condition.
10 Pat Kane's testimony of May 5, 2006, included information that liabilities exceeded
11 assets by roughly \$18,000,000 and that Coudert did not have the ability to pay all its
12 existing obligations.

13 24. After this lawsuit was filed defendant COUDERT BROTHERS, LLP's
14 attorney informally told the Court and plaintiff's counsel that defendant COUDERT
15 BROTHERS, LLP's insurance proceeds were not required to be paid until the self
16 insured retention of at least \$3,000,000 was paid by defendant COUDERT
17 BROTHERS, LLP. This occurred in court on June 28, 2006.

18 25. After this lawsuit was filed defendant COUDERT BROTHERS, LLP, filed
19 a Chapter 11 Bankruptcy Petition in the United States Bankruptcy Court for the
20 Southern District of New York, Case No. 06-12226. Notice of the automatic stay was
21 given on October 2, 2006.

22 26. The practical effect of: a) a negative balance sheet; b) the requirement
23 that the self insured retention be paid before the insurance proceeds are paid; and
24 c) the automatic stay following the filing of bankruptcy, which prevents any litigation
25 unless recovery is stipulated to be limited to insurance proceeds; is d) clients of
26 defendant COUDERT BROTHERS, LLP who had been damaged by the negligence of
27 defendant COUDERT BROTHERS, LLP, while it was allowed to practice law in the
28 State of California, are left without a remedy unless the partners of COUDERT

1 **BROTHERS, LLP are individually liable for the negligence of the partnership.**

2 WHEREFORE, plaintiff prays for judgment against the defendants, and each of
3 them, as follows:

- 4 1. For economic damages, according to proof, in excess of the minimum
5 jurisdiction of this court;
- 6 2. For interest on the judgment from the date of filing suit;
- 7 3. For costs of the suit; and
- 8 4. For such other and further relief as to the court seems just and proper.

9
10 Dated: November 7, 2006

LAW OFFICES OF MICHAEL J. PIUZE

11
12 By: _____
13 MICHAEL J. PIUZE
14 Attorneys for Plaintiff
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICESenoRx, Inc. v. Coudert Brothers, LLP

Case No. CGC 04-435849

STATE OF CALIFORNIA COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 11755 Wilshire Boulevard, Suite 1170, Los Angeles, California 90025.

On November 7, 2006, I served the foregoing document described as: **FOURTH AMENDED COMPLAINT FOR DAMAGES FOR PROFESSIONAL (LEGAL) NEGLIGENCE**, on the parties in this action by placing:

_____ the original to the propounding party and a true copy to all other parties; or

X a true copy thereof enclosed in a sealed envelope addressed as follows:

Martin K. Deniston, Esq.
Wilson, Elser, Moskowitz, Edelman & Dicker LLP
555 South Flower Street, Suite 2900
Los Angeles, California 90071
TEL (213) 624-3044
FAX (213) 624-8060
Attorneys for Coudert Brothers LLP

Charles Keefe, Esq.
Coudert Brothers LLP
1114 Avenue of the Americas
New York, NY 10036
TEL (212) 626-4400
FAX (212) 626-4120

(X) By Mail: As follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

() By Personal Service: I delivered such envelope by hand to the addressee(s) above.

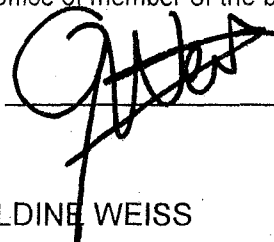
() By Federal Express: I caused such envelope to be delivered by Federal Express delivery service to the offices of the addressee.

() By Facsimile Transmission: I caused the above-named document to be transmitted by facsimile transmission telephonically to the offices of the addressee(s) at the facsimile number(s) so indicated above. The transmission was reported as complete and without error. A copy of the transmission report properly issued by the transmitting facsimile machine is attached hereto.

Executed on November 7, 2006, at Los Angeles, California.

(X) (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

() (Federal) I declare that I am employed by the office of member of the bar of this court at whose direction the service was made.



GERALDINE WEISS

EXHIBIT 2

SENORX, INC. vs. COUDERT BROTHERS, LLP, et al.

Case No. C -01075 SC

REMAND MOTION

SUPERIOR COURT OF CALIFORNIA

County of San Francisco

Department No. 503

SENORX, INC.,

Plaintiff,

Case No.: CGC 04 - 435849

v.

COUDERT BROTHERS, LLP, and
DOES 1 - 500,

ORDER RE: DEFENDANTS' REQUEST
FOR JUDICIAL NOTICE; DEMURRER
TO FOURTH AMENDED COMPLAINT;
MOTION TO STRIKE

Defendants.

DEFENDANTS' REQUEST FOR JUDICIAL NOTICE

Pursuant to Defendants' Request for Judicial Notice, the Court takes
judicial notice of the following:

Exhibit A: Judicial notice is taken of the New York Department of State
Certification and the California Secretary of State Registration pursuant
to Evidence Code §452(h).

1
2 Exhibit B: Judicial notice is taken of the Doe Amendments filed in this
matter pursuant to Evidence Code §452(d).

3 Exhibit C: Judicial notice is taken of the existence of the LLP Certificate
4 of Registration filed with The State Bar of California pursuant to
Evidence Code §452(h).

5 Exhibit D: Judicial notice is taken of the existence of the declarations
6 previously filed in this action pursuant to Evidence Code §452(d). The
Court does not take judicial notice of the truth of the content of said
7 declarations.

8 Exhibit E: Judicial notice is taken of the existence of the Coudert
Brothers, LLP website pursuant to §452(h). The Court does not take
9 judicial notice of the truth of the content of the website. Judicial notice
is taken of provisions of New York state law pursuant to Evidence Code
10 §452(a).

11 Exhibit F: Judicial notice is taken of this Court's prior Order pursuant to
Evidence Code §§ 452(c), (d).
12

13
14 **DEMURRER TO FOURTH AMENDED COMPLAINT**

15 The issue before the Court is whether Plaintiff has pled facts sufficient to
16 state a cause of action against the individual partners ("Defendants") of
17 Coudert Brothers, LLP for the alleged legal malpractice of a former partner.

18 The parties agree that California Corporations Code § 16956(a)(2) sets
19 forth the security requirements applicable to law firms that operate as limited
20 liability partnerships in California. Plaintiff seeks to hold the individual
21 partners responsible, pursuant to Corporations Code §16956(a)(2)(C), as
22 guarantors of the partnership's self-insured retention which is permissible
23 under Corporations Code § 16956(a)(2)(A).
24
25

1
2 An ultimate resolution of the issues raised in Defendants' Demurrer to
3 Fourth Amended Complaint will involve dissecting the provisions of this statute
4 and applying the fruits of that undertaking to the facts of this case. The
5 viability of Plaintiff's cause of action needs to be analyzed in a factual context
6 whether on a Motion for Summary Judgment/Summary Adjudication or at
7 trial.

8 Having *sua sponte* reconsidered its prior Order Sustaining Demurrer to
9 Third Amended Complaint, the Court concludes that Plaintiff has pled
10 sufficient facts to state a cause of action against Defendants under the
11 applicable statute. Defendants Demurrer to Fourth Amended Complaint is
12 overruled.

13
14 **DEFENDANTS' MOTION TO STRIKE**

15 Defendants' Motion to Strike paragraphs 23 through 26 of the Fourth
16 Amended Complaint is granted pursuant to California Code of Civil Procedure
17 § 436(a).

18 Defendants' Motion to Strike Plaintiff's Doe Amendments is denied.
19 Whether Plaintiff was genuinely ignorant of the true identities of the Doe
20 Defendants (Defendants herein) at the time of the filing of the original
21 complaint is irrelevant in this case. Here, Plaintiff was genuinely ignorant of
22 the *facts* giving Plaintiff a cause of action against Defendants at the time of the
23 filing of the original complaint. *Munoz v. Purdy* (1979) 91 Cal.App.3d 942, 946.

Therefore, pursuant to California Code of Civil Procedure § 474, Plaintiff's Doe
Amendments are proper.

ORDER

Defendants are granted leave to answer within 15 days.

DATED: JAN 23 2007

JUDGE KATHERINE FEINSTEIN

KATHERINE FEINSTEIN
Judge of the Superior Court

**SUPERIOR COURT OF CALIFORNIA
County of San Francisco**

SENORX, INC.

Plaintiff(s),

vs.

COUDERT BROTHERS, LLP, and
DOES 1 – 500,

Defendant(s),

Case Number: CGC – 04- 435849

**CERTIFICATE OF MAILING
(CCP 1013a (4))**

I, Melinka Jones, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On January 23, 2007, I served the attached ORDER RE: DEFENDANTS' REQUEST FOR JUDICIAL NOTICE; DEMURRER TO FOURTH AMENDED COMPLAINT; MOTION TO STRIKE by placing a copy thereof in a sealed envelope, addressed as follows:

Michael Piuze, Esq.
Law offices of Michael Piuze
11755 Wilshire Blvd., Suite 1170
Los Angeles, CA 90025
310-312-1102

Martin K. Deniston, Esq.
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
555 South Flower Street, Suite 2900
Los Angeles, CA 90071
213-443-5100

and, I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: January 23, 2007

GORDON PARK-LI, Clerk

By: MELINKA JONES

Melinka Jones, Deputy Clerk

EXHIBIT 3

SENORX, INC. vs. COUDERT BROTHERS, LLP, et al.

Case No. C -01075 SC

REMAND MOTION

COURTESY COPY

JORDAN LAW GROUP
PATRICK W. JORDAN (Bar No. 52115)
WILLIAM GREEN (Bar No. 129816)
1010 "B" Street, Suite 320
San Rafael, CA 94901
Telephone: (415) 459-9865
Fax: (415) 459-9871

ENDORSED
FILED
San Francisco County Superior Court

OCT 27 2004

GORDON PARK-LI, Clerk
BY: JUN R. PANELO
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

Attorneys for SENORX, INC. PLAN / APR 01 2005 900AM

DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

SENORX, INC.,

Plaintiff,

vs.

COUDERT BROTHERS, LLP, and
DOES 1-500,

Defendants.

CASE NO. 00C 04435849

COMPLAINT FOR PROFESSIONAL
NEGLIGENCE, BREACH OF
CONTRACT AND BREACH OF
FIDUCIARY DUTY

DEMAND FOR JURY TRIAL

Plaintiff, SenoRx, Inc. ("SenoRx"), alleges on information and belief as follows:

GENERAL ALLEGATIONS

1. At various relevant times alleged herein, Plaintiff, SenoRx, was and is a California Corporation authorized to and transacting business in the State of California.

2. Defendant, Coudert Brothers, LLP (hereinafter "Coudert") was and is a Limited Liability Partnership transacting business in the State of California.

3. Plaintiff is ignorant of the true names and capacities of defendants sued herein as Does 1-500, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and thereon alleges, that each of the fictitiously named Defendants is and was responsible in some manner for the occurrences herein alleged and that

1 Plaintiff's damages were proximately caused by such Defendants.

2 4. Plaintiff is informed and believes, and thereon alleges, that each
3 Defendant, including Doe defendants, were at all material times acting as an agent for each of the
4 other Defendants jointly and severally liable with each of those other Defendants for all liabilities
5 and causes of action set forth herein.

6 **FIRST CAUSE OF ACTION**
7 **(FOR PROFESSIONAL NEGLIGENCE)**

8 5. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 4
9 of this complaint as though fully set forth herein.

10 6. At all relevant times, Plaintiff SenoRx was engaged in an Attorney-Client
11 relationship with Coudert. Pursuant to the Attorney-Client relationship, SenoRx requested that
12 defendant Coudert to provide legal services relating to the filing of Japanese, European and
13 Canadian PCT applications.

14 7. Coudert failed to timely and properly render those legal services in breach
15 of Coudert's duty of care toward SenoRx.

16 8. As a direct and proximate result of Coudert's breaches of the standard of
17 care, SenoRx suffered damages. Said monetary damages include, but are not limited to, any and
18 all amounts lost by SenoRx as a result of the failure to timely or properly file the Japanese,
19 European and Canadian PCT applications, as well as the fees paid to subsequent counsel to
20 attempt to rectify Coudert's negligent acts and/or omissions. The amount of SenoRx's damages
21 is in excess of the jurisdictional limit of this court and subject to proof at trial.

22 **SECOND CAUSE OF ACTION**
23 **(FOR BREACH OF WRITTEN CONTRACT)**

24 9. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 4
25 of this complaint as though fully set forth herein.

26 10. At all relevant times, Plaintiff SenoRx entered into a written contract with
27 Coudert. Pursuant to the written contract, Coudert agreed to provide legal services relating to the
28 filing of Japanese, European and Canadian PCT applications.

1 11. Coudert failed to timely and properly render those legal services in breach
2 of its written contract with SenoRx.

3 12. As a direct and proximate result of Coudert's breaches of the standard of
4 care, SenoRx suffered damages. Said monetary damages include, but are not limited to, any and
5 all amounts lost by SenoRx as a result of the failure to timely or properly file the Japanese,
6 European and Canadian PCT applications, as well as the fees paid to subsequent counsel to
7 attempt to rectify Coudert's negligent acts and/or omissions. The amount of SenoRx's damages
8 is in excess of the jurisdictional limit of this court and subject to proof at trial.

9 **THIRD CAUSE OF ACTION**
10 **(FOR BREACH OF FIDUCIARY DUTY)**

11 13. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 4
12 of this complaint as though fully set forth herein.

13 14. At all relevant times, Plaintiff SenoRx was engaged in an Attorney-Client
14 relationship with Coudert. As such, Coudert became a fiduciary for SenoRx and therefor had
15 certain fiduciary obligations and duties toward SenoRx. Pursuant to the fiduciary relationship,
16 Coudert had a duty to provide certain legal services relating to the filing of Japanese, European
17 and Canadian PCT applications.

18 15. Coudert failed to timely and properly render those legal services in breach
19 of its fiduciary duty toward SenoRx.

20 16. As a direct and proximate result of Coudert's breaches of the standard of
21 care, SenoRx suffered damages. Said monetary damages include, but are not limited to, any and
22 all amounts lost by SenoRx as a result of the failure to timely or properly file the Japanese,
23 European and Canadian PCT applications, as well as the fees paid to subsequent counsel to
24 attempt to rectify Coudert's negligent acts and/or omissions. The amount of SenoRx's damages
25 is in excess of the jurisdictional limit of this court and subject to proof at trial.

26 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

27 (1) For monetary damages in excess of the jurisdictional limit of this Court
28 caused by Defendant's breaches.

- 1 (2) For interest at the legal rate;
- 2 (3) For attorneys' fees and costs of suit incurred herein; and,
- 3 (4) For such other and further relief that the Court may deem appropriate.
- 4

5 DATED: October 26, 2004.

JORDAN LAW GROUP
PATRICK W. JORDAN
WILLIAM GREEN

6
7
8 By: 
9 WILLIAM GREEN
Attorneys for Plaintiff SENORX, INC.

10
11 **DEMAND FOR JURY TRIAL**

12 Plaintiff, SenoRx Incorporated hereby demands a jury trial in the above-
13 referenced matter.

14 DATED: October 26, 2004

JORDAN LAW GROUP
PATRICK W. JORDAN
WILLIAM GREEN

15
16
17 By: 
18 WILLIAM GREEN
Attorneys for Plaintiff SENORX, INC.